

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2009-KA-0196-COA

CLAYTON TRAMMELL

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF FOR APPELLANT

BY:

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APPELLANTS REPLY BRIEF

The State of Mississippi has filed its brief in this case and has failed to refute Appellant's claims that:

ISSUE ONE

Whether trial court erred in failing to grant Appellant's motion to suppress evidence of gun which was found during search of Appellant's mother's home and where gun was not listed on search warrant, was not found in the room of the home where Appellant resided, was found in an area of the home not under Appellant's control, was not in plain view of the officer conducting the search and had to be hunted down within the closet in which gun was found.

ISSUE TWO

Whether trial court erred in failing to grant new trial in the interest of justice.

ISSUE THREE

Whether evidence was insufficient to sustain conviction as a matter of law.

ISSUE FOUR

Whether Jury was misled by the instructions provided to the jury which never actually addressed central issues and whether trial court erred in denying the defendant's jury instructions over defendant's objections.

ISSUE FIVE:

The trial court erred in failing to grant Appellant's Motion for Appointment of Psychiatrist under Rule 9.06 U.R.C.C.C. to Determine Competency to Stand Trial. Counsel's failure to pursue the motion constitutes an unauthorized waiver of such hearing in violation of Rule 9.06.

ISSUE SIX

Trial court erred in denying motion to suppress evidence seized pursuant to search warrant.

ISSUE SEVEN

Whether Appellant was subjected to Ineffective Assistance of Counsel At Trial, in violation of the Sixth Amendment to the United States Constitution and whether such issue should be heard in this direct appeal where the record is clear and contains relevant proof of such claim.

ISSUE EIGHT

Whether sentence was excessive where court imposed sentence, which exceeded Appellant's life expectancy, and where jury did not authorize life sentence to be imposed by it's verdict.¹

ISSUE NINE

Whether Appellant was denied his constitutional right to fair trial because of the cumulative effect of the claims stated herein and because of the failure of Appellant to be provided with effective assistance of counsel at trial.

¹ The sentence of 30 years mandatory was tantamount to a life sentence which exceeded Trammell's life expectancy in view of Trammell's age and the fact that a life expectancy would be 59 years.

REPLY ARGUMENT

PROPOSITION ONE

The argument advanced by the state fails to recognize that the gun seized during the search was not on the search warrant and, at the time of the search, was claimed by the home owner, Trammell's mother. Moreover, if the gun was in a closet and underneath clothing it was not in plain sight. The gun should have been suppressed. Mrs. Trammell was present during the search and was continuously telling the officer that the gun belonged to her and had been in her home without leaving the home, for her own protection. The search warrant never ever listed a gun. The police was not looking for a gun at all.

This court should find that the trial court erred in its decision not to suppress the gun and that such failure was not harmless.

PROPOSITION TWO

The state has failed to refute Trammell's defense argument and claim that the verdict was against the weight of the evidence. There was no testimony that a gun was displayed nor that the victim was placed in fear. The lack of a gun is evidence by the state having failed to seek a gun in the search warrant. There was no gun. The record states that the victim, with help from the state, did assert that she was scared for her life. Armed robbery requires that such fear must derive from the display of a firearm or deadly weapon. The victim must express the belief that there is such an instrument. Miss. Code Ann. §97-3-79. One could be put in fear of life by the existence of a storm, but this would not constitute the required element of armed robbery. The victim never stated why she was scared for her life. The state has failed to refute the Appellant's claim. This court should reverse and remand on this claim.

PROPOSITION THREE

Appellant would assert that this claim was adequately argued in brief and supported by the record. The state has failed to refute the argument. This claim is also supported by other points made in this brief. This court should reject the state's argument and reverse and remand to the trial court.

PROPOSITION FOUR

Appellant would assert that the record speaks clear on the point that the trial court committed reversible error in failing to correct the jury instructions pointed out by Appellant in the initial brief. This court should reverse and remand on that claim.

PROPOSITION FIVE

Clayton Trammell was entitled to a competency hearing before the trial court. This issue is well pointed out and supported by the initial brief filed here. The trial court had reasonable grounds to believe, or at least doubt, that Appellant was competent to stand trial. Appellant made the motion (C. P. 8) nothing more was required by Appellant. The trial court erred in failing to conduct the competency hearing. Trammell cannot argue that he was or was not competent to stand trial. A hearing and mental evaluation was the only means that this may have been determined. Trammell is no doctor in this area. The trial court had a motion and a legal reason to order a hearing. This court should reverse on that ground.

PROPOSITION SIX

The state argued that this claim had been responded to by a previous argument. Appellant would agree.

PROPOSITION SEVEN

Trammell would assert that his brief on appeal adequately sets out his claim and argument on ineffective assistance of counsel. Moreover, Mrs. Trammell was present at the trial to testify in reference to the gun found in her home, that she knew the gun was at her home, that it was her gun, that the gun has been in her home all along and could not have been used in a robbery. Defense counsel never put Mrs. Trammell on the witness stand. Her testimony would have been supportive to the Motion to Suppress.

PROPOSITION EIGHT

The sentence imposed upon Trammell was excessive. The state has not refuted this claim and this court should reverse and remand.

PROPOSITION NINE

This court should grant relief on cumulative grounds where such argument and claims were adequately presented in those grounds above in the initial brief and in this brief.

CONCLUSION

Trammell would respectfully ask this court to reject the state's argument and find that Appellant suffered a violation of his constitutional rights under the 14th Amendment where the sentencing Court imposed an excessive sentence. This court should reject the state's argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Clayton Trammell, Appellant pro se, have this date mailed a true and correct copy of the above and foregoing Appellant's Reply Brief, by United States Postal Service, first class postage prepaid, to:

Honorable Jim Hood
Attorney General
P. O. Box 220
Jackson, MS 39205

This the 16th day of July, 2010.

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